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Staff Proposal to Revise General Order 156 for the Supplier Diversity Program

Rulemaking 21-03-010

Prepared by California Public Utilities Commission's Business and Community
Outreach Group of the Office of the Executive Director

July 16, 2021

SUMMARY OF STAFF PROPOSAL

The California Public Utilities Commission's (Commission) Business and Community Outreach Group (Staff), which operates under the Commission's Executive Director, presents this proposal for revising the Commission's Supplier Diversity Program (Program) set forth in General Order (GO) 156¹ to conform to Senate Bill (SB) 255 (Bradford, Stat. 2019, Ch. 407) and incorporate the objectives of the Commission's Order Instituting Rulemaking (OIR), Rulemaking (R.) 21-03-010.²

The purpose of this staff proposal is to suggest a methodology to establish a voluntary target procurement percentage for the Program and lesbian, gay, bisexual, and/or transgender (LGBT) business enterprises for the Supplier Diversity Program and to incorporate non-utility entities, such as community choice aggregators (CCAs) and electric service providers, into the Commission's Supplier Diversity Program.³ The Staff proposal also suggests how the Commission could expand GO 156 to include businesses owned/controlled by people with disabilities, clarify certain reporting and audit requirements and refine the complaint process set forth in GO 156.

Based on its proposal, Staff seeks input on its suggestions for consideration by the Commission and by parties to achieve the objectives set forth in R.21-03-010. More information about the Commission's proceeding to consider revisions to GO 156 is available on the Commission's website on the Docket Card for R.21-03-010.

INTRODUCTION TO STAFF PROPOSAL

The Commission's R. 21-03-010 provides the framework of the revisions considered in the Program. Staff seeks to address these issues in this staff proposal with the key objectives as follows:

- Propose a methodology to establish target procurement percentages (goals) for new diverse categories of suppliers⁴ under the Program.
- Propose a method for determining a target procurement percentage for LGBT business enterprises and discuss any unique challenges with the Supplier Clearinghouse.
- Propose the addition of businesses owned/controlled by persons with disabilities, within the Program, a certification process, and establishing a target procurement percentage.
- Propose to add Workforce/Board Diversity reporting requirements to the Program.
- Propose to apply a modified version of the reporting requirements to non-utility entities in the Program, such as community choice aggregators, energy service providers, and energy storage system companies and smaller utilities and non-utilities, as set forth in SB 255 (2019).
- Provide suggested revisions to the complaint process in the Program.

¹ The current version of GO 156 is available on the Commission's website at:

<https://www.cpuc.ca.gov/proceedings-and-rulemaking/cpuc-general-orders>.

² R.21-03-010, *Order Instituting Rulemaking to Revise General Order 156—Supplier Diversity Program* (March 23, 2021), is available on the Commission's website at *Docket Card* at:

<https://docs.cpuc.ca.gov/PublishedDocs/Published/G000/M373/K321/373321411.PDF>.

³ D.15-06-007, *Order Instituting Rulemaking to Update General Order 156 to Comply with Assembly Bill 1678 by Extending Provisions of the Utilities' Supplier Diversity Program to Lesbian, Gay, Bisexual, and/or Transgender (LGBT) Business Enterprises* (June 11, 2015).

⁴ "Diverse Categories of Suppliers" are the diverse businesses communities in the Program including Minority, Women, Disabled Veteran, and, most recently, LGBT.

- Recommend the Commission provide Staff with the authority to engage in more audits of the reports submitted to the Commission pursuant to the Program.

BACKGROUND – SUPPLIER DIVERSITY PROGRAM

The Commission’s Supplier Diversity Program:

Currently, the Commission’s voluntary target procurement goals encourage utilities and other entities to procure at least 21.5% from diverse business enterprises, including: 5% from women business enterprises, 15% from minority business enterprises, and 1.5% from disabled veteran business enterprises.⁵ Over the last 35 years, the Commission’s Program has achieved significant success. In 2020, the Program accounted for more than \$12.46 billion⁶ procurement by utilities and other entities suppliers.

Chart 1: Supplier Clearinghouse Data from June 2021

Diverse Category of Business Enterprise (BE)	Businesses in Program	Businesses in Program (%)
Minority BE (MBE)	3890	44%
Women and Minority BE (WMBE)	45	1%
Women BE (WBE)	3688	42%
Disabled Veteran BE (DVBE)	2078	24%
LGBT BE (LGBTBE)	398	5%
SBA 8(a) ⁷	35	0%
Total Certified Businesses ⁸	8780	*

*Businesses may be certified in multiple categories percentage will not be 100%.

The Commission’s Supplier Diversity Program was developed soon after the California Legislature passed Assembly Bill (AB) 3678 (Moore, Stats. 1986, Ch. 1259), which sought to encourage utilities to award a

⁵ General Order 156 at Sections 8.3.6 and 8.3.7.

⁶ CPUC Annual Report to the Legislature 2020.

⁷ SBA 8(a) refers to an ownership/diversity certification sponsored by the Small Business Association (SBA) of the United States government. The SBA 8(a) program offers a broad scope of assistance to firms that are owned and controlled at least 51% by socially and economically disadvantaged individuals.

⁸ The “total certified businesses” represents the number of certified businesses in the supplier clearinghouse. Businesses can have certifications in multiple diverse categories.

proportionate share of utility procurement contracts to businesses owned/controlled by women and minorities.⁹ In response to AB 3678, the Commission established the Supplier Diversity Program in 1988, which is set forth in GO 156.¹⁰ The Program has expanded over the years to include additional diverse categories of suppliers, more classes of utilities and non-utilities, and further refinements. Under the Program, statutory requirements pertaining to reporting and planning efforts to attain contracting goals are mandatory; attaining contracting goals is voluntary.¹¹

In 1990, businesses owned/controlled by members of the disabled veteran community (DVBE) were added as a new diverse category of supplier eligible under the Commission's Supplier Diversity Program pursuant to SB 2398 (Dills, Stats. 1990, Ch. 516).¹² In 1992, the Commission in D.92-06-030 incorporated DVBEs into GO 156.¹³ In 1995, the Commission established a 1.5% target procurement percentage for disabled veteran-owned businesses under GO 156.¹⁴ Initially, members of the disabled veterans' community advocated for a 3% goal to reflect the same goal announced by Executive Order D-43-01 in 2001 to DVBE for all California state contracts.¹⁵ The Commission required each utility to establish a non-numeric goal for increasing DVBE procurement through December 31, 1996. The utilities collected and reported DVBE procurement of product and services for five years. Based on the review of DVBE spend, vendor availability, key purchasing categories, marketplace competition, and goal attainability, the Commission permanently established a 1.5% goal in 1997. In 2013, 21 years after D.92-06-030, the utilities achieved this 1.5% goal.

In 2015, the Program expanded to include LGBT businesses pursuant to AB 1678 (Gordon, Stats. 2014, Ch. 633). Through D.15-06-007,¹⁶ the Commission revised the GO 156 and determined, among other things, that LGBT businesses must obtain status qualifiers for LGBT-business enterprises to participate in the Program, must follow the Program rules as required for other businesses enterprises, and must be

⁹ GO 156 at Section 1.1.3 defines "minority-owned business" as follows: (1) a business enterprise (a) that is at least 51% owned by a minority individual or group(s) or (b) if a publicly owned business, at least 51% of the stock of which is owned by one or more minority groups, and (2) whose management and daily business operations are controlled by one or more of those individuals. The contracting utility shall presume that minority includes, but is not limited to, African Americans, Hispanic Americans, Native Americans, Asian Pacific Americans, and other groups, as defined herein."

¹⁰ D.88-04-057, *Rules Governing the Development of Programs to Increase Participation of Women, Minority, Disabled Veteran and Lesbian, Gay, Bisexual and Transgender (LGBT) Business Enterprises in Procurement of Contracts from Utilities as Required by Public Utilities Code Sections 8281-8286* (April 27, 1988).

¹¹ GO 156 and Pub. Util. Code §§ 8281-8286.

¹² Amended Pub. Util. Code §§ 8281-8286.

¹³ D.92-06-030 (June 3, 1993).

¹⁴ D.95-12-045 (December 18, 1995); GO 156 at Section 4 and Section 8.2, which states: "The goal for Disabled Veteran Business Enterprise (DVBE) participation in procurement programs of the participating utilities is set at 1.5%, effective January 1, 1997."

¹⁵ Executive Order D-43-01 by the Governor of the State of California on June 22, 2001.

¹⁶ D.15-06-007, *Decision Adopting the Amended General Order 156 with Amendments Necessary to Comply with Assembly Bill 1678 by Extending the Provisions of the Utilities' Supplier Diversity Program to Lesbian, Gay, Bisexual and/or Transgender (LGBT) Business Enterprises* (June 11, 2015). In D.15-06-007, the Commission added LGBT-owned business enterprises to the *Supplier Diversity Program*. Additional modifications were made in D.11-05-019, with minor corrections in D.12-01-030 and D.12-01-031.

included in utility and non-utility annual reports and plans by 2016.¹⁷ Additionally, the Commission adopted a plan and specific requirements towards adopting a target procurement percentage over a 5 year timeline.¹⁸ In the first few years of the 5 year timeframe, utilities were required to make multiple changes in an effort to expand the pool of eligible LGBT-business enterprises in the Supplier Clearinghouse. These changes included updating corporate supplier diversity policy outreach and recruitment and making utilities available as a resource to LGBT-business enterprises organizations.¹⁹ The utilities also monitored the progress of their outreach efforts. Afterwards, the utilities were required to update their internal targets and goals based on the qualifying businesses in the Supplier Clearinghouse. The utilities held a workshop to gather additional feedback from stakeholders. In this rulemaking, the Commission intends to establish the target procurement percentage.

With SB 255, the scope of the Program is expanded to include entities that regularly conduct business with utilities and modify the revenue thresholds that function to determine which utilities and non-utilities are subject to the Program. For example, SB 255 shifts the application of the Program from \$25 million (M) annual gross revenue threshold²⁰ for the applicability of the Program, plan, reporting requirement, and guidelines to \$25M annual gross *California* revenues.²¹ Additionally, SB 255 expands the Supplier Diversity Program to include electric service providers (ESPs)²² with more than \$25M in annual gross California utility revenues,²³ and energy storage system and vegetation management projects.²⁴ Meanwhile, a simplified reporting form is required of smaller investor-owned utilities and electric service providers (ESPs) in the Program with gross annual California revenues between \$15M and \$25M.²⁵ SB 255 also encourages participation in the Program by ESPs with annual gross California revenues less than \$25M²⁶ and encourages exempt wholesale generators, distributed energy resource contractors, and energy storage system companies to submit plans and report to the Legislature.²⁷ Community choice aggregators (CCAs) are required to submit, as part of their implementation plan,

¹⁷ In 2016, 2017, and 2018, the annual plans and reports were filed pursuant to Pub. Util. Code § 8283(a), which provides: “These annual plans shall include short- and long-term goals and timetables, but not quotas, and shall include methods for encouraging both prime contractors and grantees to engage women, minority, disabled veteran, and LGBT business enterprises in subcontracts in all categories that provide subcontracting opportunities, including, but not limited to, renewable energy, wireless telecommunications, broadband, smart grid, and rail projects.”

¹⁸ D.15-06-007 and GO 156 at Section 8.3.

¹⁹ Includes National LGBT Chamber of Commerce (NGLCC), local chapters, and/or any other groups, as appropriate, in developing an enhanced understanding on how to conduct effective outreach to the LGBT community for utility procurement and supplier diversity staff.

²⁰ The utilities included are electrical corporations, gas corporations, water corporations, wireless telecommunications service providers, and telephone corporations. GO 156 at Section 1.1.1.

²¹ Pub. Util. Code § 8283 (a)–(d).

²² Electric service provider is defined in Pub. Util. Code § 394 as a non-utility entity that offers electric service to customers within the service territory of an electric utility. The Commission further addresses electric service providers in D.03-12-015.

²³ Pub. Util. Code § 8283(a).

²⁴ Pub. Util. Code § 8283(b).

²⁵ Pub. Util. Code § 8283(f).

²⁶ Pub. Util. Code § 8283(e)(1).

²⁷ Pub. Util. Code § 8283(e)(2).

methods for ensuring procurement from “small, local, and diverse business enterprises in all categories,” including, but not limited to, renewable energy, energy storage system, and smart grid projects.²⁸ CCAs with gross annual revenues above \$15M will have annual reporting while those under \$15M are encouraged to adopt similar plans.²⁹

METHODOLOGY TO ESTABLISH VOLUNTARY PROCUREMENT GOALS

In developing a methodology to establish voluntary procurement percentages for the Supplier Diversity Program, Staff set out to ensure that the target procurement percentages are both attainable and supportive of the continued promotion of diverse suppliers. When a new diverse category of suppliers, such as disabled veteran owned business enterprises, enters the Program, Staff works with the utilities, community-based organizations (CBOs), and businesses to establish a voluntary target procurement percentage that serves as a goal for procurement for the utilities. It is important to note that these goals serve as a minimum (or a floor). In practice, Staff has observed that these target procurement percentages have been reached and surpassed over time. Staff proposes to expand upon the existing methods for establishing target procurement percentages, while moving away from the process of each new diverse category of supplier individually negotiating their calculated percentage. The proposed methods may be used for all new diverse category of suppliers entering the Program so that the Program operates with increased transparency and equitable treatment.

Staff proposed using the average 5-year utility spend as a basis for establishing the voluntary target procurement with a diverse category of suppliers. The first step is to take the 5-year sum of the total utilities’ spend for the diverse category of suppliers. Next, Staff divides that number by the 5-year total utility procurement spend. This calculated percentage of spend for the diverse category is the basis for any Staff recommendation to the Commission for establishing a voluntary target procurement percentage. Using the utility spend is a helpful metric in determining how many businesses of a diverse category of supplier are competitive in the industrial categories related to utilities’ needs.

Some CBOs and other stakeholders have expressed concern that just using the average 5-year utility spend results in target procurement percentages that are too low, and, subsequently, have sought to increase them. Staff acknowledges that targets may be perceived as low for legitimate reasons. For example, some diverse businesses may not be participating in the Program because they are unaware of the Program. Others may need assistance and education to understand the benefits of enrollment in the Supplier Clearinghouse.

In response, Staff recommends the Commission incorporate additional factors to the average 5-year utility spend for establishing target procurement percentages. One adjustment is to multiply the individual diverse category of suppliers 5-year utility spend 3 times. The precedent for this method is seen in establishing the DVBE target procurement in 1995.³⁰ Another suggested adjustment is that the Commission allow for diverse categories of suppliers to get an additional 4-year extension from their

²⁸ Pub. Util. Code § 366.2(c)(3)(H).

²⁹ Pub. Util. Code § 366.2(m)(3).

³⁰ D.95-12-045 at Ordering Paragraph 2 established a DVBE goal of 1.5% based on 3-fold increase of the spend.

original entry into the program. At the end of the 4-year period, the revised average 5-year utility spend would be increased 3-fold. The proposed extension process would be granted through a Tier 1 advice letter filed with the support of at least two CBOs of a diverse category of supplier to demonstrate community consensus. The extension allows diverse categories of suppliers, stakeholders, and CBOs to increase enrollment of eligible businesses in the Supplier Clearinghouse. This extension will provide utilities additional time to work with these new diverse suppliers and related CBOs and show where there is increased opportunity.

Staff also acknowledges that there are unique procurement challenges for new diverse categories of suppliers to the Program that are not addressed through the proposed methodology. The methodology does not, for example, include a means to increase enrollment in the Supplier Clearinghouse, let alone in industry categories with increased opportunity for utility spend. This is a critical first step to establishing the percentage goal. A challenge for new businesses of diverse category of suppliers is that certain industrial categories already have high participation levels by other diverse suppliers that often make up most of the utility market procurement. For new businesses of diverse category of suppliers and affiliated CBOs, Staff proposes that utilities work closely with them to identify industrial categories with increased opportunities for participation in addition to guidance for industrial categories that may have more technical barriers to entry. Staff also recommends that utilities report their procurement using standard industrial codes, which can be useful indicators of understanding future opportunities. Staff notes that it will take time for new diverse categories of suppliers to build eligible businesses, enroll businesses in the Supplier Clearinghouse, and reach their target procurement goals. Staff find that the procurement data shows that the longer diverse categories of suppliers participate in the Program, the higher the procurement from that group of diverse suppliers.

LGBT-BUSINESS ENTERPRISES

LGBT-Business Enterprises in the Supplier Clearinghouse:

As with other new diverse categories of suppliers, Staff and utilities have worked with LGBT businesses enterprises (LGBTBEs), CBOs and advocacy groups to overcome challenges and increase the enrollment of LGBTBEs in the Program. Staff recognizes that LGBT businesses face challenges. As a relatively new diverse category in the Program, LGBTBEs have the challenge of building a qualified business base within industrial categories that have opportunities. Another challenge is that some owners of eligible LGBT businesses are disinclined to enroll as LGBT for fear that discriminatory practices that may result in lost contracts.³¹ Staff has been working on strategies for recruiting qualified LGBT businesses with the help of national, statewide, and local business organizations and associations. To support LGBT businesses, Staff, LGBT organizations, and utilities have provided information on available technical assistance and capacity building programs for enhancing business acumen. While enrollment began to pick up in by 2019, more planning across LGBT organizations and utilities is needed to achieve an overall increase.

³¹ Staff discussed these concerns for discriminatory practices with businesses that have contracts with utilities within and outside of California. Some of these business owners are enrolled in the Supplier Diversity Program under another diverse category.

Chart 2. LGBT Businesses Enterprises - 5 years (2016-2020)

5 YEAR RESULTS	LGBT businesses \$	LGBT businesses procurement/spend %
Total 2020 ³²	\$42,907,637	0.11%
Total 2019	\$63,594,437	0.17%
Total 2018	\$38,767,083	0.11%
Total 2017	\$47,997,406	0.14%
Total 2016	\$36,632,874	0.12%

LGBT Businesses Target Procurement Percentage:

Since the Commission included LGBT as a diverse category of supplier in the Program, there has been extensive discussion about target procurement percentages. The utilities and LGBT organizations worked to establish a target procurement percentage but differed on the desired target percentage goal. The utilities suggested extending the goal setting period for an additional three years, as utilities struggled to incorporate qualified LGBT businesses into their supply chains, averaging 0.135% total spend in 2016–2019 (see Chart 2). Initially, the utilities were not interested in veering from the 5-year average spend. Once negotiations between LGBT CBOs and utilities started, the utilities recommended a stretch goal of 0.25% thereby doubling the calculated percentage of 0.13%. Since then, a proposed goal of 0.5% was proposed based on collected procurement data. LGBT CBOs supported establishing a target procurement percentage that mirrored the Disabled Veteran Business Enterprise's goal of 1.5%. In response, Staff hosted four public workshops/meetings³³ to discuss the goal setting process and clarify the precedent used in establishing the DVBE goal in 1997.³⁴ After many discussions, evaluating data, and holding public workshops, the utilities filed a joint report recommending a numerical based percentage target goal of 0.5% on December 31, 2020.

Staff recommends the Commission continue to be consistent with the methodology when considering LGBTBE target procurement percentages in the Supplier Diversity Program while striving to reach the 1.5% goal. Staff agrees that the target procurement percentage for the diverse suppliers should be both aspirational and attainable. While the data does not substantiate the current request by some parties for a 1.5%, Staff recommends moving towards the aspirational goal of 1.5% by providing LGBT with an extension as noted in the proposed methodology. During this time, the LGBT organizations and utilities should make a concerted effort to build awareness about the program and industrial sectors with

³² Total diverse spend decreased in 2020. It was 33.2% in 2019 and 29.8 % in 2020.

³³ October 31, 2019; January 14, 2020; July 29, 2020; and October 28, 2020.

³⁴ D.92-06-030 (December 18, 1995).

increased opportunity for LGBT businesses. Based on the significant growth in enrollment of LGBTBE and the spend increase between 2018 and 2019 in Chart 2, Staff believes that a reevaluation in four years using the proposed methodology may likely result in the aspiration target of 1.5% with the benefit of having developed an increased pipeline of eligible LGBTBEs in the Supplier clearinghouse.³⁵

DISABLED MEMBERS OF COMMUNITY BUSINESS ENTERPRISES

In R.21-03-010, the Commission is considering expanding the Supplier Diversity Program to include businesses owned/controlled by disabled persons and a procurement target goal for businesses owned/controlled by disabled persons. Staff recommends that the Commission adopt revisions to GO 156 to include this additional diverse category of suppliers in the Supplier Diversity Program that is consistent with the intent of Pub. Util. Code § 8281. Staff proposes that the Commission adopt a definition for these businesses as follows: a for-profit business at least 51% owned, managed, and controlled by a person with a disability.³⁶ Staff recommends this definition because it is similar to the existing definitions for other groups with procurement target goals in the Supplier Diversity Program. Staff also supports building a business base and establishing a target procurement goal based on the proposed methodology aforementioned and with what is consistent in the program. Staff further recommends utilizing the Supplier Clearinghouse and/or a comparable agency to perform verification of eligibility to participate in the Program, which would also be consistent with past practice of the Commission.

WORKFORCE/CORPORATE BOARD DIVERSITY REPORTING REQUIREMENT

Government agencies are increasingly requiring corporations to collect and report data on their workforce and corporate board diversity. Additional entities are also reporting to federal and state government agencies, such as the U.S. Equal Employment Opportunity Commission (EEOC),³⁷ the U.S. Securities and Exchange Commission (SEC),³⁸ and to other states with requirements varying by government agency. The EEOC requires all private sector employers with 100 employees or more to annually submit workforce diversity data.³⁹ In May 2021, the SEC Chair announced plans to propose a rule requiring public companies to disclose workforce data.⁴⁰

³⁵ The Staff did not consider 2020, which was atypical due to the COVID-19 pandemic.

³⁶ This proposal is consistent with DisabilityIN, which can be found at: <https://disabilityin.org/what-we-do/supplier-diversity>.

³⁷ See Joint Parties April 12, 2021 Opening Comment R.21-03-010 at 6; SoCalGas and SDG&E April 12, 2021 Opening Comments R.21-03-010 at 2.

³⁸ See Joint Parties April 12, 2021 Opening Comment R.21-03-010 at 6.

³⁹ U.S. Equal Employment Opportunity Commission, EEO-1 Data Collection, available at <https://www.eeoc.gov/employers/eo-1-data-collection>; see section 709(c) of Title VII of the Civil Rights Act of 1964, as amended, 42 U.S.C. § 2000e-8(c), and 29 CFR 1602.7-.14 and 41 CFR 60-1.7(a).

⁴⁰ Reuters, *U.S. SEC chair planning new workforce data disclosure for public companies*, <https://www.reuters.com/business/sustainable-business/us-sec-chair-planing-new-workforce-data-disclosures-public-companies-2021-05-13/>.

This practice is already occurring in California with multiple entities of Supplier Diversity Program⁴¹ reporting to the California Secretary of State.⁴² SB 826 (2018)⁴³ and AB 979 (2020)⁴⁴ required that publicly held companies headquartered in California must include a minimum number of board members who are either women or from underrepresented communities. Companies report compliance with this mandate through their annual Publicly Traded Corporate Disclosure Statement filed with the California Secretary of State.⁴⁵ The California Secretary of State must review these reports and then it must issue a report regarding compliance with these corporate board requirements.⁴⁶

In the past, the Commission has collected workforce and corporate board diversity data. On a one-time basis in 2019, the Commission requested workforce and corporate board diversity data from GO 156 participants after the 2019 *En Banc* hearing, where stakeholders raised concerns about whether participants were sufficiently encouraging diversity within their own employees and boards.⁴⁷ In addition, regarding a different segment of the utility industry, the Commission annually collects from electrical corporations, on an ongoing basis, data on workforce diversity related to their Renewables Portfolio Standard (RPS) Program pursuant to a directive in Pub. Util. Code § 913.4(f).⁴⁸

Utility commissions in other states collect workforce diversity data or will soon start to collect this data. For example, since 2000, the Texas Public Utility Commission has required electrical and telecommunications utilities to annually report workforce diversity data under Texas Utilities Code (Tex. Util. Code) §§ 39.909⁴⁹ and 52.256.⁵⁰ In December 2020, the Pennsylvania Public Utility Commission voted to encourage major jurisdictional utilities to file annual diversity reports.⁵¹ More recently, in February 2021, the Wisconsin Public Service Commission announced that all water, sewer, gas, and electric utilities must report workforce and corporate board diversity data by June 1, 2021.⁵²

⁴¹ R.21-03-010 IOU party comments, April 12, 2021.

⁴² SCE April 12, 2021 Opening Comment R.21-03-010 at 5; CWA April 12, 2021 Opening Comment R.21-03-010 at 4; Great Oaks April 12, 2021 Opening Comment at 4.

⁴³ SB 826 (Jackson, 2018) is available on the California Legislature's website at: https://leginfo.ca.gov/faces/billNavClient.xhtml?bill_id=201720180SB826.

⁴⁴ AB 979 (Holden, 2020) is available on the California Legislature's website at: https://leginfo.ca.gov/faces/billTextClient.xhtml?bill_id=201920200AB979.

⁴⁵ California Secretary of State, *Diversity on Boards* at <https://www.sos.ca.gov/business-programs/diversity-boards>.

⁴⁶ California Secretary of State, *Women on Boards* at <https://www.sos.ca.gov/business-programs/women-boards>; California Secretary of State, *Underrepresented Communities on Boards* at <https://www.sos.ca.gov/business-programs/underrepresented-communities-boards>.

⁴⁷ Comcast April 12, 2021 Opening Comment R.21-03-010 at 6.

⁴⁸ California Public Utilities Commission, *RPS Reports and Data*, which are available on the Commission's website at: <https://www.cpuc.ca.gov/industries-and-topics/electrical-energy/energy-reports-and-whitepapers/rps-reports-and-data>; and *Renewables Portfolio Standard (RPS) Program* at: <https://www.cpuc.ca.gov/industries-and-topics/electrical-energy/electric-power-procurement/rps>.

⁴⁹ Texas Util. Code § 39.909 available at <https://statutes.capitol.texas.gov/Docs/UT/htm/UT.39.htm#39.909>.

⁵⁰ Tex. Util. Code § 52.256 available at: <https://statutes.capitol.texas.gov/Docs/UT/htm/UT.52.htm#52.256>.

⁵¹ Pennsylvania Public Utility Commission, *Diversity Reporting or Major Jurisdictional Utilities*; Notice of Proposed Rulemaking available at:

<http://www.pacodeandbulletin.gov/Display/pabull?file=/secure/pabulletin/data/vol51/51-23/890.html>.

⁵² Wisconsin Public Service Commission, *PSC Announces Requirement for Utilities to File Workforce and Supplier Diversity, Affordability Data* available at:

https://apps.psc.wi.gov/APPS/NewsReleases/content/PDF_download.aspx?id=679.

In this proceeding, the Commission is considering whether to collect data on workforce and corporate board diversity from GO 156 participants, including utilities, community choice aggregators, and electric service providers.

Staff suggests that workforce and board diversity data collection supports the underlying goal of Pub. Util. Code § 8281 to realize the economic well-being of the state of California by encouraging diversity and inclusion within the utility industry through transparent reporting.⁵³ In addition, the Commission emphasized the importance of workforce diversity in the 2015 Supplier Diversity Study, stating that “with an increasing minority population and business growth rates, it is imperative that corporations infuse minority *employees*, customers, and suppliers into their business processes in order to gain and maintain a long-term competitive edge.”⁵⁴ For this reason, Staff recommends that the Commission adopt workforce and corporate board reporting requirements and direct Staff to establish parameters on what types of information should be reported annually by entities in the GO 156 Supplier Diversity Program.

SENATE BILL 255 NEW ENTERPRISES AND OTHER RELATED REVISIONS

Community Choice Aggregators:

To fulfill the requirement of SB 255 (2019), Staff began the outreach process in early 2020 to engage and educate CCAs on the Supplier Diversity Program. Staff hosted a preliminary meeting on February 26, 2020 to provide an overview of the Program, SB 255, and reporting requirements. Prior to the meeting, CCAs were provided with a copy of GO 156 and reporting templates. Section 9 of GO 156 provides a detailed description of the annual reporting requirements established in the original decision. CCAs were informed that their first annual report was due March 1, 2021, and every year thereafter, on the same date.⁵⁵ Staff worked with CCAs to design a reporting template to capture their spend data that closely mirrored the utilities’ reporting template.

Some CCAs were concerned with GO 156 requirements to establish goals and recruitment of women, minority, disabled veteran, and LGBT business enterprise.⁵⁶ CCAs are considered municipalities and must follow 1996 Proposition (Prop) 209 (California Civil Rights Initiative), which does not allow the recruitment of any individual group based on race, sex, color, ethnicity, or national origin for public contracting.⁵⁷ Staff addressed their concerns by adjusting certain reporting requirements that were in conflict with Prop 209. Fourteen CCAs submitted annual reports and recorded procurement spend totaling \$1.95 million or 0.06% with diverse businesses in 2020. Moving forward, Staff proposes that incoming CCAs will be subject to the same reporting requirements currently established.⁵⁸

⁵³ Pub. Util. Code § 8281 at:

https://leginfo.ca.gov/faces/codes_displayText.xhtml?lawCode=PUC&division=4.&title=&part=&chapter=7.&article=5.

⁵⁴ *General Order 156: A Study to Quantify the Value of Supplier Diversity* at 3. (Emphasis added.) This document is available at: https://www.cpuc.ca.gov/-/media/cpuc-website/files/uploadedfiles/cpuc_public_website/content/about_us/supplier_diversity/cpuc-supplier-diversity-study-final.pdf.

⁵⁵ SB 255 (2019); Pub. Util. Code §§ 366.2 21(2)(A) and (B).

⁵⁶ General Order 156 at Sections 8.

⁵⁷ CA Proposition 209 at Section 31(a).

⁵⁸ <https://www.cpuc.ca.gov/about-cpuc/consultant-and-contract-opportunities/utility-supplier-diversity-program/cqa-procurement-reports>.

Energy Service Providers and Smaller Utilities:

Staff is currently working with the California Energy Storage Alliance and the Solar Energy Industries Association to develop outreach and educate other entities (exempt wholesale generators, distributed energy resource contractors, and energy storage system companies) identified in SB 255⁵⁹ to encourage their participation in the program. Staff intends to work with smaller investor-owned utilities and electric service providers (with gross annual California revenues above \$15M but less than \$25M) and entities who agree to voluntarily report to develop a simplified reporting template that reflects the current reporting process already established for the participating utilities and CCAs.

COMPLAINT PROCESS REVISIONS

The existing complaint process related to GO 156 is set forth in Section 7. Staff suggests the complaint process set forth in Section 7 of GO 156 be refined and clarified to eliminate the potential for confusion and promote ease of use by removing the current language and replacing it with references to the Commission's Rules of Practice and Procedure.

Specifically, Staff recommends that GO 156 incorporate the existing complaint process set forth in the Commission's Rules of Practice and Procedure so that stakeholders are able to access the process for submitting complaints to the Commission with greater ease, rather than relying on the unique process set forth in GO 156, with little or no guidance.⁶⁰ Article 4 of the Commission's Rules of Practice and Procedure sets forth the rules for filing complaints with the Commission on matters falling within the Commission's jurisdiction, which includes enforcement of GO 156. Article 4 also set forth an expedited complaint process, for matter involving a lesser amount of money or no money.

Staff further recommends that the Commission continue to require stakeholders to complete any internal complaint-resolution procedures administered by the Supplier Clearinghouse, as currently noted in Section 7.2.1. of GO 156.⁶¹ In addition, to ensure that stakeholders do not rely on the Commission's complaint process in the Rules of Practice and Procedure prematurely, for example, before the Supplier Clearinghouse's internal complaint process is fully completed, the Staff recommends the Commission require stakeholders to attach a verification (as set forth in the Commission's Rules of Practice and Procedure at Rule 1.11.) to any complaint filed with the Commission attesting to the fact that the complainant has fully exhausted any applicable internal complaint resolution process administered by the Supplier Clearinghouse.⁶² This verification by the complainant would preserve the Commission's intent, which is currently set forth in Section 7.2.1., that states that any entity or person

⁵⁹ SB 255 (2019); Pub. Util. Code § 366.2.

⁶⁰ The Commission existing complaint process is available at the following link on the Commission's website: <https://www.cpuc.ca.gov/proceedings-and-rulemaking/rules-of-practice-and-procedure>.

⁶¹ Section 7.2.1. of GO 156 states: "Business enterprises whose WMLGBTBE status has been denied by the Clearinghouse, or who have been deverified by the Clearinghouse, may appeal the decision to the Commission after exhausting their remedies under the internal appeal process implemented by the Clearinghouse, a copy of which will be provided by the Clearinghouse upon request by the affected business enterprise."

⁶² Rule 1.11 of the Commission's Rules of Practice and Procedure states: (a) Whenever a document is required to be verified by these rules, statute, order, or ruling, the verification must be made either by affidavit sworn or affirmed before a notary public or by declaration under penalty of perjury. When the verification is made by the person who signs the document, the verification must be separately stated and signed. (b) The verification must be signed (see Rule 1.8(e)), and state that the contents of the document are true of the verifying person's own knowledge, except as to matters that are stated on information or belief, and as to those matters that he or she believes them to be true.

filing a complaint can only do so “after exhausting their remedies under the internal appeal process implemented by the Clearinghouse.”

Lastly, Staff recommends that Section 7 of GO 156 be deleted and replaced by citations to the existing rules for filing complaints and verifications under the Commission’s Rules of Practice and Procedure.

Proposed Language for Section 7:

“Complaints relating to General Order 156 and the determinations of the Clearinghouse shall be filed pursuant to the Commission’s Rules of Practice and Procedure. With regard to complaint pertaining to the determinations of the Clearinghouse, the Commission will not entertain such complaints unless a verification is attached, in which the complainant attests that it has exhausted its remedies under any internal appeal process administered by the Clearinghouse. This verification shall comply with the requirements of the Rule 1.11 of the Commission’s Rules of Practice and Procedure. “

AUDIT PROCESS REVISIONS

GO 156 requires the Commission to perform an audit every two years of one class of utilities.⁶³ The Commission’s Utility Audits Division will continue to determine the selection process and audit methodology.⁶⁴ All GO 156 participating entity reports are subject to an audit. Staff recommends one GO 156 annual report be randomly selected annually or bi-annually, for one or more industry groups and audited to confirm the most recently reported women, minority, disabled veteran, and LGBT business enterprise spend is accurate.

⁶³ General Order 156 at Section 9.1.10, states: “The Commission’s Division of Water and Audits, shall commence an audit program in 2012 wherein at least one annual GO 156 report will be randomly selected every two years for one industry group and audited to confirm that the most recently reported WMDVLGBTBE spend is accurate. The Audit Division will determine a random selection process and audit methodology to perform the audit, commencing with the energy industry, followed by telecommunications, water, in subsequent two-year periods, to be repeated in that order.”

⁶⁴ General Order 156 at Section 9.1.10.